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ABSTRACT

The ramifications of the Supreme Court ruling on "Grove City College v. Bell," which narrowly interpreted Title IX of the Education Amendment of 1972 are discussed. Title IX protects the rights of women and girls in educational programs or activities receiving federal financial assistance. In the case, the Supreme Court held that a college whose sole source of federal money is in the form of student financial aid is required by Title IX to prohibit discrimination in its student financial aid program only. Under the new ruling the rest of the institution is free to discriminate. The impact of the ruling was immediate, as illustrated by examples taken from actual cases of how the decision has affected students and employees and has hampered federal enforcement activities. In one instance, the Department of Education dropped sex discrimination charges against the University of Maryland's intercollegiate athletics program because the athletics program did not receive direct federal funding. The authors warn that the potential for future discrimination is virtually unlimited and provide illustrations of discrimination that was illegal before the "Grove City" decision but that could now be interpreted as legal based on the outcome of that case. (RM)

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Injustice Under the Law:

The Impact of the *Grove City College* Decision on Civil Rights in America

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February 28, 1984: Implications

Most Americans think there are laws that protect people from discrimination. And there are. Yet, because of a Supreme Court ruling on February 28, 1984, many Americans—women, disabled persons, people of color and older people—lost important civil rights protections.

What is *Grove City College v. Bell* and how did it alter the basic civil rights assured to citizens under law? To understand the impact of the ruling, it is necessary to look beyond Title IX of the Education Amendments of 1972, the law immediately affected by the ruling, and to trace the intent of Congress in creating a group of civil rights laws designed to protect Americans from discrimination in all federally assisted programs.

Over the last two decades four laws were enacted to prevent the federal government from supporting or subsidizing discrimination. The intent of these laws was best described by President John F. Kennedy in explaining the purpose and scope of the first of these laws, Title VI of the Civil Rights Act of 1964: "Simple justice requires that public funds to which all taxpayers of all races contribute, not be spent in any fashion which encourages, subsidizes or results in racial discrimination."

The four basic civil rights statutes are as follows:

Title VI of the Civil Rights Act of 1964, which protects against discrimination on the basis of race, color or national origin in federally assisted programs or activities;

Title IX of the Education Amendments of 1972, which protects the rights of women and girls in educational programs or activities receiving federal financial assistance;

Section 504 of the Rehabilitation Act of 1973, which prohibits recipients of federal financial assistance from discriminating against disabled persons;

The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age in the delivery of services and benefits supported by federal funds, with the exception of employment practices.

These four laws ban discrimination in "programs or activities" receiving federal financial assistance. For many years, under both Republican and Democratic Administrations, this was interpreted as Congress had intended, to prevent all institutions receiving federal funds from discriminating against women, minorities, disabled

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persons or older people in any aspect of their activities.

Then, in *Grove City College v. Bell,* the Supreme Court held that a college receiving federal money only in the form of student financial aid is only required by Title IX to prohibit discrimination in its student financial aid program.* Under the new ruling, the rest of the institution was free to discriminate on the basis of sex.

The language of Title IX was modeled closely after that of Title VI of the Civil Rights Act of 1964, and then repeated in later civil rights statutes—including Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975. Thus, the *Grove City College* decision has broad and serious implications for all persons protected under these civil rights statutes. The decision affects almost every recipient of federal funds, including hospitals, correctional facilities, airport authorities, state highway departments, municipal utilities and county school systems. Unless the discrimination is tied specifically to a federally assisted program, race, sex, disability and age discrimination cannot be investigated or corrected.

Under the new decision, federal money would continue to flow to recipients that openly discriminated. And, because only four percent of the more than $13 billion in federal assistance received by colleges and universities is earmarked for specific programs, most students stand to be vulnerable to discrimination through most, if not all, of their college experience.

Lest anyone doubted the implications of the ruling, they had only to consult the Assistant Attorney General for Civil Rights in the Department of Justice, who immediately declared that this narrow interpretation applied to other non-discrimination laws for recipients of federal financial assistance. Beginning February 28, 1984, it was open season on civil rights. To assess the damage, civil rights advocates had only to watch and wait.

Grove City College: Impact

The impact of the Supreme Court decision was immediate. On March 8, 1984—a little over a week after the *Grove City College* decision—the Department of Education dropped sex discrimination charges against the University of Maryland's intercollegiate athletics program because the athletics program did not receive direct federal funding.

The Department's Office for Civil Rights—which enforces Title VI, Title IX, Section 504 and the Age Discrimination Act as they apply to education—had uncovered discrimination in several areas, including travel and per diem allowance, the provision of support services, and the accommodation of student interests and abilities. Yet, female athletes and coaches at the University of Maryland and other universities no longer had federal protection against this discrimination.

The University of Maryland case was just the beginning. In the wake of the *Grove City College* decision, at least 63 cases in the Department of Education have been closed, limited or suspended. The majority (44) of these are Title IX cases but 14 Section 504 cases and five Title VI cases also have been affected.

In addition, a dozen other cases that were in the formal enforcement stage still are jeopardized. These are cases where discrimination has been found, voluntary compliance was refused, and recipients are using the Supreme Court's decision as a defense against federal enforcement.

The decision has created absurd results in many instances. Complaints are not investigated because the alleged discrimination took place in a building not constructed or renovated by federal loans. When complaints are investigated, the whole process takes longer because the federal government has to search for federal money connected with a specific program. The paperwork for institutions has increased as they are asked to show precisely where the current federal dollars are, and in some instances where past federal assistance went (as in the case of buildings or equipment).

Clear violations of federal law go uncorrected while students lose valuable education that can rarely be recovered and employees lose jobs or are denied them. Prolonged debate takes place over what constitutes a "program or activity" under the civil rights law, while the universities, schools, and correctional facilities receive millions of federal dollars.

*On the same day as the *Grove City College* ruling, the Supreme Court extended this narrow interpretation to a Section 504 employment case, *Consolidated Rail v. Darrone.* Although the court correctly identified Consolidated Rail as a recipient of federal dollars, it applied a narrow interpretation to the term "program or activity," thus sending a clear signal that it intends to apply the same limitation to all civil rights laws.

Injustice Under the Law: The Evidence Mounts

Described below are just a few real-life examples of how the *Grove City College* decision already has affected students and employees and has hampered federal enforcement activities. These examples are taken from *actual* cases; the Office for Civil Rights (OCR) docket number of each case is listed.

■ A student at Hill Top Beauty School in Daly City, California complained to OCR that clients were more often assigned to white students than Black students, that Black students were assigned to Black clients and that clean up duties not properly the responsibility of students were given to Black students. Many students attend Hill Top with the help of federal assistance such as Pell Grants and National Direct Student Loans.

But OCR decided it could not investigate the complaint because the alleged discrimination occurred in the Practical Training part of the cosmetology course which did not receive direct federal funds. The case was closed. Now there will never be any investigation of the truth or falsity of the charges of discrimination. OCR #09-83-4004.

■ A Northeastern University (Boston, Massachusetts) student filed a Title IX complaint. She said the university failed to take action to redress a sexual harassment complaint and had no grievance procedure, as required by Title IX. Prior to the *Grove City College* decision, OCR only had to determine that the university received federal funds. Now OCR must find whether federal funds go to the program in which discrimination is charged. In this case, it was the Economics Department located in Lake Hall. And the University had received $2,216,000 under the College Housing Loan Program to renovate student housing, as well as $9.9 million in student aid for 1983-84.

But OCR decided that it could not investigate the complaint because Lake Hall, where the alleged discrimination occurred, was not built or renovated with federal loans. Ironically, if the alleged sexual harassment had occurred in student dorms which were renovated with federal loans, the complaint would have been investigated. This case is on "policy hold" at the Education Department. OCR #01-84-2020.

■ A maintenance worker at the University of Charleston in West Virginia complained to OCR that he had been the victim of discrimination in employment because he was disabled. The University's lawyers told OCR that it received no federal funds for maintenance and therefore OCR had no authority to investigate. Since 1979 the University of Charleston has received approximately $3,376,182 in federal funds from the Department of Education, including $472,940 in federal student aid in the 1983-84 school year.

But OCR put this complaint on "policy hold" because it could not link the allegation of discrimination to a specific, federally funded program. Section 504 is the only federal law protecting disabled persons from employment discrimination based on their handicap. Without an OCR investigation, this disabled employee has no other recourse under federal law. OCR #03-84-2040.

■ A woman instructor at the Fashion Institute of Technology in New York City complained to OCR that she was discriminated against in employment because of her sex. OCR did not investigate because it could not show that Federal funds went directly to the Department of Fashion Design, where she worked. The Fashion Institute, however, received almost a quarter of a million dollars in federal funds in 1983 and 1984.

Prior to the Supreme Court's decision, where the woman worked would not have made any difference, as long as the Institute itself received federal money. Now the case is on "policy hold" at OCR. OCR #02-77-0560; #02-83-2049.

■ Mecklenburg County Public Schools in Virginia assigns elementary and junior high school students to "ability" levels within a grade. Based on test scores, available space, teacher judgment, and "best educational environment," students are grouped together for all classes. The lowest groups are predominantly Black. These students show no improvement in academic performance.

OCR found that the district violated Title VI because it assigned Black students to racially segregated classes with no educational justification. The school district argues that OCR has not shown that ability grouping occurs in a "program" receiving federal funds. Until the Title VI violation is corrected, Black children in the lowest track will continue to receive an inferior and racially segregated education. The case is now before an Administrative Law Judge. OCR #03-81-5013.

■ A former corrections officer at the Perryville, Arizona Correctional Center filed a complaint that he had been terminated because of his disability. The Arizona Department of Corrections receives $450,000 of federal funds under the Education of All Handicapped Children Act and another grant under the Vocational Education Act.

But OCR declined to investigate the complaint because the complainant was not employed in, nor did he have any "substantial" contact with, any federally assisted education program at Perryville. OCR closed the case, leaving this individual completely unprotected by federal law requiring non-discrimination in employment of disabled persons. OCR #09-83-40003.

■ The State University of New York at Buffalo received more than $1.8 million in federal funds from the Department of Education in 1983 and 1984. But when OCR notified the university that it would conduct a Title VI compliance review of the Computer Science Program, university officials resisted. Citing the *Grove City College* decision, they said OCR could not do the review because the Computer Science Program received no federal funds.

OCR backed off. It decided to do a more limited review of admissions to the Computer Science Program because admissions is, under the *Grove City College* decision, a "program" that receives federal financial assistance through federal student aid. Before that decision, there would have been no question that OCR could investigate any part of an institution that received federal funds. Now OCR can only determine whether minority students are admitted to the program on a nondiscriminatory basis but not whether they encounter unequal treatment once they are enrolled in the Computer Science Program. OCR #02-84-6025.

■ A deaf woman enrolled at West Georgia College in Carrollton for the purpose of obtaining certification as a teacher of disabled students. When the college denied her a sign language interpreter she filed a complaint of discrimination with OCR. OCR found that the college's practice violated Section 504. Although the College receives $1,835,464 in federal aid, including a $40,165 grant under the Education for All Handicapped Children Act, the College argued that the woman is not enrolled in a program that receives federal financial assistance because she is not seeking a degree. Further, the College argued that classroom instruction was not a program receiving federal aid.

Therefore, any deaf student in any course at the college is denied services which would enable him or her to benefit fully from the instruction. This discriminatory policy affects deaf students enrolled and discourages other deaf persons from attending West Georgia College. College officials are using the *Grove City College* decision as a delaying tactic in an open-and-shut case of discrimination against disabled students. OCR #04-83-2006.

■ Junior and senior high school students in Pickens County, South Carolina are given a choice of co-educational or same sex physical education classes. If too few students sign up for the same-sex classes, those who chose co-ed classes are assigned on the basis of their sex to segregated P.E. classes. OCR investigated and found that this practice discriminated against both boys and girls on the basis of sex. It is a violation of Title IX.

But an Administrative Law Judge agreed with the school district that OCR had no authority to regulate P.E. classes because none of the $2 million in federal funds received by the Pickens County School District were earmarked for physical education. The investigation was completed long before the Supreme Court's ruling, when OCR's jurisdiction was clear. Now the *Grove City College* decision is being used by the school system as an obstacle to enforcement of the federal law banning sex discrimination in schools receiving federal funds. OCR #04-80-5030.

The Future After Grove City College: What We Can Expect

Unfortunately, these examples are just the tip of the iceberg. The potential for federally funded discrimination under *Grove City College* is virtually limitless. Already federal enforcement efforts have been severely restricted. Coverage that was comprehensive is now a legal patchwork. As a woman, a person of color, a disabled person or an older person moves through an institution, the degree of civil rights protection will wax and wane depending on the nature and extent of federal funding.

The following examples describe the limited reach of these civil rights laws in the wake of the Supreme Court's decision. They illustrate the

discrimination that will illegal before the decision but could be legal today—as long as the Supreme Court ruling stands as the law of the land.

The Potential for Discrimination Under Title VI of the Civil Rights Act of 1964

■ A college or university would still be required not to discriminate on the basis of race in student admissions, but once admitted, students would be protected from unequal treatment only in those departments or programs that have received a federal grant or that are housed in buildings built with federal construction loans.

■ A city department of housing and recreation receiving federal assistance to build low-cost apartment houses could operate run-down playgrounds in Black neighhorhoods and well-equipped and well-maintained playgrounds in white neighborhoods. After *Grove City College,* this racial discrimination would not be covered by Title VI because there is no federal money spent directly on any of the department's playgrounds.

■ A public high school receiving only federal vocational education funds could allow, under Title VI, racially separate science clubs, debate teams and glee clubs because these extracurricular programs and activities do not receive direct federal financial assistance.

■ If a hospital has one maternity ward where none of the doctors accept Medicaid patients, the hospital could argue that that ward is not covered by Title VI and could exclude Black or Hispanic patients or provide inferior treatment to patients in that ward.

The Potential for Discrimination Under Title IX of the Education Amendments of 1972

■ Colleges and universities could give preference to married men, to the exclusion of married women, in admissions to graduate teaching assistantships.

■ A women's intercollegiate athletics program could be limited or abolished, while the men's program was maintained or expanded. Institutions could refuse to pay for travel, or could pay less for women athletes. Institutions would be free to offer women fewer coaching opportunities, to provide inferior equipment, facilities and uniforms, and to schedule the women's practice at the least desirable times.

■ Only those few students in college programs receiving federal assistance would be protected against sexual harassment—and then only during the hours they were involved in the program. For example, discrimination in the university's financial aid office is prohibited when the institution receives student aid monies. Students standing *inside* the office are protected by federal law against sexual harassment; once they walk *outside* the door, the protection ends.

■ Colleges and universities could provide better housing—and more of it—for men. They could require women, but not men, to live on campus. But men could be denied housing in the newest or most convenient dorms.

■ Unless a class, program or department received money from the federal government, women could be excluded, or preference given to men for any reason. If a class were overcrowded, for instance, the professor could choose to admit all interested men first.

The Potential for Discrimination Under Section 504 of the Rehabilitation Act of 1973

■ Airlines which use federally subsidized airports and federal air traffic controllers could segregate disabled people in waiting areas or within the airplane. They could restrict the seating of disabled persons to first class, refuse to seat blind or deaf passengers in rows next to exits, "bump" disabled people first on overcrowded planes, or allow disabled persons to fly only on certain flights.

■ A state agency receiving federal funds could deny employment to a qualified disabled person in one of its state-run programs that does not directly receive federal funds, solely on the grounds of his or her disability.

■ Agencies, organizations and institutions receiving federal funds could refuse to provide access to disabled persons in programs not directly receiving federal funds. For example, a licensing bureau that is funded solely by licensing fees, but is part of a state agency receiving federal funds, would be exempt from the responsibility to provide an interpreter for a deaf person wishing to take a licensing exam.

■ Disabled students could be denied the opportunity to pursue certain occupations because individual classes or programs are not accessible. For example, a disabled student wishing to take a chemistry class required for entrance into medical school could be denied the opportunity to attend class because the chemistry laboratory is inaccessible, as long as the Chemistry Department receives no direct federal assistance.

The Potential for Discrimination Under the Age Discrimination Act of 1975

■ A university with a college of Medicine or Law could deny admission to qualified applicants over a certain age on the grounds that an older person will have fewer years to practice the profession.

■ A state rehabilitation service could give low priority to persons above a certain age or refuse to train persons above a certain age, on the grounds that they are harder to employ or less likely to benefit from job training.

■ A university could limit fellowships in its graduate school program to persons under a certain age—for example, 30—on the grounds that the program is designed to encourage talented but inexperienced young persons.

■ A university or college could deny campus housing to persons above a certain age, because they are "too old" to live in dorms with young people.

■ A state health department could limit flu immunizations to the working-age population.

Conclusion

The impact of the *Grove City College v. Bell* decision is just beginning to be felt. For every example that comes to the public eye or that results in a discrimination charge, there are hundreds that go unreported and unnoticed except by those directly involved. The decision has sent a signal to recipients of federal funds that they *can* accept federal funds and they *can* discriminate.

Just one year after the *Grove City College* decision, it is clear that John Kennedy's dream of "simple justice" is far from a reality in towns and cities across America. The mounting evidence of new instances of civil rights abuse, now openly condoned by the federal government, indicates that America has given a green light to discrimination. The legacy of *Grove City College* must weigh on the conscience of this nation, an ever present reminder of the unfinished business we must complete if we are to create a just society.

About Title VI of the Civil Rights Act of 1964

"No person in the United States shall, on the ground of *race, color or national origin,* be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any *program or activity* receiving federal financial assistance."

On August 26, 1963, over 200,000 people, Black and white, joined the "March on Washington" to protest inequality in our society and to press for the passage of the Civil Rights Act of 1964. They demanded an end to maltreatment by local and state enforcement officials and more power for the Attorney General to act in cases where civil rights had been denied. The Senate, during debate on the Civil Rights Act, ended a filibuster on civil rights for the first time.

The Civil Rights Act of 1964 broke the back of Jim Crow in American life. It opened movie theaters, restaurants and other places of public accommodation. Employment discrimination against minorities and women in the private sector was banned under Title VII. And Title VI prohibited racial discrimination by recipients of federal financial assistance.

Title VI is the primary vehicle for desegregation of schools, hospitals, public systems of higher education, agriculutural extension services, social service agencies and public housing. The threat of loss of federal funds has been used primarily under Title VI—a total of 220 recipients have had federal funds terminated at some time between 1966 and 1982 by the Department of Health, Education and Welfare and the Department of Education for failure to comply with Title VI. Of the 220 recipients, only two remain ineligible for federal funds.

Progress Made Under Title VI

- Black Americans are no longer refused treatment at white-only hospitals, nursing homes and clinics.
- Schools in the South that were formerly segregated by law are now desegregated; in 1964, less than one percent of southern Black youngsters attended predominantly white schools. By 1980, 43 percent of these students were in predominantly white schools and only 23 percent were in schools with 90 to 100 percent minority student enrollment.
- States, counties and cities cannot discriminate against Black neighborhoods in the location and maintenance of roads.
- Racial assignment of Black and white teachers has been eliminated in virtually all schools, North and South.
- County extension services, 4-H clubs and rural electric cooperatives must be open to persons of all races.
- From 1970 to 1979, Black enrollment in postsecondary institutions increased 92 percent: Hispanic enrollment more than doubled. These figures compare with an 8.3 percent increase in white male post-secondary enrollment during the same time period.

About Title IX of the Education Amendments of 1972

"No person . . . shall, on the basis of *sex* be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any *education program or activity* receiving federal financial assistance . . ."

Title IX of the Education Amendments of 1972 was passed to ensure equal educational opportunities for women and girls at every educational level—from kindergarten through graduate school, including vocational and technical schools. Title IX also protects teachers and other employees in education.

Title IX has significantly improved the quality of life for countless women and girls. Title IX spurred the recent growth in the number of women doctors and lawyers. Under Title IX some women teachers have received higher salaries; and other women have won the battle against sexual harassment. Most women, and their school-age daughters, whether or not they realize it, have seen the benefits of Title IX in school sports programs.

Title IX does have some exceptions. Schools controlled by religious organizations are exempted from Title IX whenever compliance could be contrary to their religious beliefs, for example. University-based social fraternities and sororities, as well as clubs such as the Girl Scouts and Boy Scouts, also are exempt.

Progress Made Under Title IX

- Under Title IX, admissions policies which officially restricted the enrollment of women, particularly in professional schools, have been eliminated. Between 1972 and 1980, therefore, the number of women in medical school rose from 11 percent to 26 percent; in law school, from 10 percent to

34 percent; and in veterinary school, from 12 percent to 30 percent. The number of women awarded doctorates increased from 16 percent to 30 percent.

■ Opportunities for women and girls in sports were vastly expanded after the passage of Title IX. The number of girls playing high school sports has increased from seven percent to 35 percent, for example. Today, more than 10,000 women are attending college on athletic scholarships, a rarity before the passage of Title IX.

■ Title IX required school counselors to test and score male and female students in the same way, so that girls were not automatically counseled to become nurses while boys were encouraged to become doctors.

■ Title IX banned school policies which expelled pregnant students or prevented them from participating in school activities.

About the Age Discrimination Act of 1975

". . . no person in the United States shall, on the basis of *age*, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any *program or activity* receiving federal financial assistance."

The Age Discrimination Act of 1975 bans discrimination on the basis of age in the delivery of services and benefits by recipients of federal financial assistance. The Act was motivated by Congressional belief that discriminatory policies and practices exist which prevent older persons from taking full advantage of federally-supported services and benefits.

The law called for the United States Commission on Civil Rights to conduct a study of federally assisted programs to determine the existence, nature and scope of age discrimination. The Commission found that "discrimination on the basis of age was widespread," with deprivation affecting persons within several age categories. Those age 65 and over were "consistently adversely affected."

The statute has a number of exemptions, including a program or activity that "reasonably" takes into account "age as a factor necessary to the normal operation" or "achievement of any statutory objective;" programs or activities that take into account reasonable factors other than age or where age is the statutory criterion for benefits and assistance. Employment practices and labor-management joint apprenticeship training programs also are exempted.

The implementing regulation for the Age Discrimination Act did not become effective until January 27, 1983, so that full implementation of the law has just begun. Even so, there were 76 complaints filed in fiscal year 1981 under the Age Discrimination Act, 144 in 1982 and 133 in 1983. The majority of the complaints filed under the Act involved education—for the most part denials of admissions to colleges and universities. Other areas cited included health services, housing, denial of food stamps, and access to rehabilitation programs. The Act establishes important civil rights for older Americans and has the potential for far-reaching positive impact.

About Section 504 of the Rehabilitation Act of 1973

"No otherwise qualified handicapped individual—shall, solely by reason of his *handicap*, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any *program or activity* receiving federal financial assistance."

Section 504 of the Rehabilitation Act of 1973 prohibits recipients of federal assistance from discriminating against disabled people. The law covers physical—including orthopedic, neurological, or sensory disabilities, as well as mental disabilities, including retardation, emotional illness, and learning disabilities. Also covered are such hidden disabilities as cancer, epilepsy, respiratory and cardiovascular conditions. Areas covered by Section 504 include:

■ *Education*—Disabled people have made great strides in education in the last 10 years. For example, one university—Ohio State University—has increased its enrollment of disabled students from 32 to 662 since the enactment of Section 504.

■ *Employment*—Section 504 prohibits the discriminatory effects of pre-employment inquiries, hiring criteria, and below-standard wages, and ensures equal treatment in employee benefits, promotions, and vocational rehabilitation programs. Disabled people are just beginning to feel the positive effects of this law but still remain the most unemployed and underpaid group of people in the country.

■ *Accessibility*—Section 504 guarantees access (by means of ramps, elevators, parking spaces, appropriate warning signs for deaf and blind people, for instance) to government buildings, schools, shopping centers, public housing, public monuments, sidewalks and streets.

■ *Housing*—Section 504 prohibits such discrimination as denial of access to public housing, zoning obstacles and overly protective fire codes.

■ *Medical Services*—Section 504 guarantees protection against denial of life-saving treatment of disabled infants, medical experimentation, communication barriers to treatment, and involuntary sterilization.

■ *Other areas of Section 504 coverage include:*

1. Voting rights—requiring accessible polling places and assistance in marking ballots in federal elections.
2. Transportation—requiring airline accessibility and access to public transit systems.
3. Insurance
4. Social Services
5. Recreational programs
6. Criminal justice systems—requiring availability of interpreters, accessible toilet facilities, and restriction of arbitrary incarceration of mentally retarded people.
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